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EXAMINER

MOORE, IAN N

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9/29/08 have been fully considered but they are not persuasive.

Regarding claims 1-22, the applicant argued that, "...Focsaneanu does not disclose, teach or suggest...the detection of at least one of human voice and silent on said communication line for a predetermined period of time... Focsaneanu destroy the transparency that exist in the conventional gateway device...since Focsaneanu fails to disclose a VAD...Sonnlic fail to disclose prima facie obviousness...replacement of them (i.e. Focsaneanu limitation) with VAD of Sonnic to arrive invention...use of hindsight..." in page 9-13.

In response to applicant's argument, the examiner respectfully disagrees with the argument above.

Focsaneanu discloses a voice detector (see FIG. 8, transceiver 238) enabled to detect at least one of human voice and silence on a communication line (see **FIG. 8, 9, transceiver 238 with identification/detection means of access module detecting/identifying voice/POTS, or silent/no-service at initiation on the line between two end users 300 and 302 during; see col. 7, line 45-67; see col. 9, line 3-10, 25-45, 55 to col. 10, line 12)** for a predetermined period of time (see col. 3, line 14-20, 38-41; see col. 1, line 51-54; see col. 2, line 20-22, 25-26, 45-47; see col. 3, line 63-65; see col. 8, line 10-15; for a predetermined/pre-program period/time of detecting, or for a predetermined/allocated time/period of current/active connection).

Sonnlic also discloses a voice activity detector (see **col. 2, line 53-55; if voice activity detector (VAD)**) detect at least one of human voice and silence for a predetermined period of

Art Unit: 2416

time (see col. 1, line 30-39, 40-50; see col. 2, line 40 to col. 3, line 20; see col. 4, line 35-65; **VAD detects voice activity in speech/voice or silent for a predetermined time/duration**).

Thus, it is clear that the combined system of Focsaneanu and Sonnic discloses the broadly claimed invention.

In response to argument on Focsaneanu destroying the invention, the combined system of Focsaneanu and Sonnic discloses exactly as recited in the broadly claim invention. Thus, it is clear that Focsaneanu does not destroy the invention. Note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that replacing of Focsaneanu, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, examiner is replacing Focsaneanu with Sonnic, rather using the teaching of Sonnic.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

Art Unit: 2416

applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

/Ian N. Moore/

Primary Examiner, Art Unit 2416